* **HIGH COURT OF DELHI AT NEW DELHI**

\+ **CS(OS) No. 2254/2007**

Date of decision : 3rd December, 2007

\# M/s. D.D. Construction & Others
..... PLAINTIFFS

! Through : Mr. G.S. Vashisht, Advocate
Ms. Ruchi Vashist,Advocate

Versus

$ Smt. Latika Shome & Anr. ..... DEFENDANTS

^ Through : Nemo.

%

CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

(1) Whether reporters of local paper may be allowed to see the judgment?

(2) To be referred to the reporter or not?

(3) Whether the judgment should be reported in the Digest ?

ARUNA SURESH, J. (Oral)

1. Present suit has been filed by the plaintiff firm and its partners against defendants No.1 & 2 for declaration, permanent and mandatory injunction. The maintainability of the suit is under question before the Court. Undisputedly, the plaintiff is an unregistered firm under the Partnership Act. An unregistered partnership firm cannot file a suit for any of its claim against a third party. Section 69 of the Partnership Act is a complete bar to filing

of a suit to enforce a right arising from a contract in a court of law on or behalf of the firm against a third party unless the firm is registered. The relevant provisions of Section 69 of the Partnership Act are reproduced as below:-

> "Effect of non-registration--
> (1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.
> (2) No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.
> (3).....
> (4)....."

2. One of the facet of the mandatory character of this provision is that as soon as it comes to the knowledge of the Court that the requirement of the said Act has not been observed, the Court can return the suit irrespective of whether that point has been pleaded by a party/parties and whatever be the stage of the suit. This is so because the

maintainability of a suit under Section 69 of the Partnership Act is a question of law and such question of law can be raised at any stage of the proceedings. The disability of an unregistered firm to sue is of crippling nature and it is so compulsive and comprehensive that there is no escape from it. Though the Act does not make registration a mandate for any partnership firm to carry on business but provisions of Section 69 of the Partnership Act work out as an indirect compulsion for registration. Even subsequent registration of the firm after the filing of the suit cannot rectify the suit so filed by unregistered firm.

3. In the present case, plaintiff No. 1 which is an unregistered firm has filed the suit to enforce a right arising out of a contract with defendant No. 2. Since the provisions of Section 69 (2) of the Partnership Act bar such a suit, present suit as filed by the plaintiff is not maintainable. Simply because partners have also been arrayed in the list of plaintiffs, does not make the suit maintainable because bar under Section 69 of the Act still remains. As per the case of the plaintiffs themselves, defendant No. 1 had entered into an agreement on 1.7.2004 with defendant No. 2 to sell her property No. I-1669, Chittranjan Park, New Delhi, with a clear stipulation that the sale deed would be

executed after the property was got freehold and 'NOC' was obtained. Allegedly an irrevocable power of attorney was executed but I do not find any such attorney on the record. Even the alleged agreement dated 1.7.2004 is not a registered document and I find certain blanks at various places in the copy placed on record. It is defendant No. 2 who has further entered into agreement to sell the said property with the plaintiffs again by an unregistered agreement to sell dated 22.3.2005. On the face of it, suit of the plaintiffs against defendant No. 1 is barred by period of limitation as it has been filed to enforce the agreement to sell dated 1.7.2004 and is not maintainable and also obviously there is no privity of contract between the plaintiffs and defendant No. 1. Undisputedly, plaintiffs are not in possession of the property in suit. Therefore, there is no cause of action in favour of the plaintiff and against the defendant No. 1.

4. Under these circumstances, I conclude that the suit filed by the plaintiffs is not maintainable and the same is accordingly dismissed with no orders to cost.

December 3, 2007 **ARUNA SURESH**
jk **(JUDGE)**